

# Assembly Bill 168 (Pedro Nava)

## Sex Crimes Disclosure

### Reasons Why AB 168 Is Necessary

Last year, the Court of Appeals decided *In re James H.*, (2007)154 Cal.App.4<sup>th</sup> 1078 which held that the sealed juvenile records of a respondent's past sex crimes could not be disclosed to the Board of Parole Hearings for Sexual Violent Predator (SVP) evaluations. This case has prevented the Department of Mental Health (DMH), the California Department of Corrections and Rehabilitation (CDCR), and petitioning attorneys from accessing highly probative information that would assist in assessments and trials to determine whether or not an individual is a sexual violent predator.

### Existing Law

Currently, prosecutors, CDCR, or DMH may inspect and use documentation from unsealed juvenile proceedings in SVP assessments and trials.

However, these reviewing entities cannot obtain specified information from the respondent's juvenile records, if they have been sealed.

Under existing law, although courts are already prohibited from sealing most SVP predicate offenses in the first place because they are cross listed as Welfare & Institutions Code § 707(b) offenses, there are still some SVP sex crime offenses that may be sealed. Juvenile records involving the following offenses may still be sealed:

- (1) continuous child molestation (Penal Code § 288.5)
- (2) rape by threat of future "retaliation" (Penal Code § 261(a)(6))
- (3) sodomy by threat of future "retaliation" (Penal Code 286(b)(3))

- (4) oral copulation by threat of future "retaliation" (Penal Code 288a(d)(2))

"Retaliation" is defined in the context of the above offenses narrowly as a threat to kidnap or falsely imprison, or to inflict extreme pain, serious bodily injury, or death unless the victim is under the age of 14.

### This Bill

AB 168 (Nava):

- Authorizes the petitioning attorney and other reviewing agencies access to sealed juvenile records involving SVP prior sex offenses, listed in Welfare and Institution Code § 6600(b) on January 1, 2009.
- **However, juvenile records may only be accessed under AB 168 if the person has been convicted as an adult of a felony on the list of sexual violent predator offenses. The list is also limited to those crimes listed on January 1, 2009.**
- In effect, the records of offenses that would be made available for

inspection and use in trial under this proposal would only be a slight expansion of the documents currently available to the relevant agencies for SVP proceedings. The proposal would allow access, for the first time, to sealed juvenile records involving the sex crimes of continuous child molestation and multiple other SVP sex offenses – rape, sodomy, and oral copulation – committed by the threat of future “retaliation,” as defined above.

### **Facts**

- A significant number of SVP candidates are screened out by the CDCR and particularly by the DMH.

As of January 4, 2008, the CDCR had referred 17,130 individuals to DMH for SVP assessment. Of these 17,130 individuals, DMH record review limited the number of individuals to be sent for clinical evaluation to 6,491. After clinical evaluation, only 1,308 were referred to district attorney offices for SVP commitment proceedings. From these statistics, it is evident that most individuals are screened in or out of the SVP program by the DMH.

This legislative proposal would provide DMH and the other agencies within the assessment and commitment chain more information about SVP candidates in order to accurately assess whether or not commitment is appropriate.

- Among juveniles, the frequency of sex crimes has increased dramatically. The number of children under 18 accused of forcible rape, violent and nonviolent sex offenses rose from 24,100 in 1985 to 33,800 in 2004.

- The nature of sex crimes committed by juveniles gives a good indication of the individual’s sexual and violent propensities as an adult. Studies show that 1 in 2 sex offenders began their abusive behavior as juveniles.

### **Comments**

SVP prior sex offenses are egregious crimes which show significant indications of an individual’s propensities to engage in sexually violent crimes. Records of these offenses contain sociological and psychological reports that would be a valuable tool for inspection and use in a SVP proceeding. With this information, the DMH, the CDCR, and petitioning attorneys would be in a better position to evaluate the sexual and violent propensity of an individual.

### **Support**

(As of 03/23/09):

Los Angeles County District Attorney’s Office (sponsor)

Sacramento County DA Jan Scully  
PORAC

Crime Victims United

CA State Sheriffs’ Association

CA District Attorneys Association

CA Peace Officers’ Association

CA Police Chiefs Association

CA Correctional Supervisors Organization

State Coalition of Probation Organizations

AFSCME

District Attorney Jan Scully, Sacramento

### **Opposition**

CA Public Defenders

Legal Services for Prisoners with Children

CA Attorneys for Criminal Justice

### **Votes**

### **For More Information**

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